

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Kari Stankiewicz Berry, et al.

DEFENDANTS

City of Philadelphia, et al.

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Anthony S. Pinnie, Esq., 334 W. Front St., Media, PA 19063
610-892-9200

Attorneys (If Known)

Armando Brigandi, Esq., City of Philadelphia Law Dept., 1515
Arch Street, 14th Floor, Phila., PA 19102 215-683-5381

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC Sec. 1983

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Armando Brigandi, Divisional Deputy City Solicitor

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

Kari Stankiewicz Berry, Administratrix for	:	Civil Action
	:	
The Estate of Michael Berry, Deceased, and	:	NO: _____
On behalf of minors Alyvia Berry & Tyler Berry	:	
4713 D. Street	:	
	:	
Plaintiff	:	Formerly
	:	Court of Common Pleas
v.	:	Civil Trial Division
	:	Civil No.
City of Philadelphia;	:	PCCP April Term, 2014; No. 1053
Philadelphia Police Department	:	
Police Officer James Boone Badge #1525	:	Wrongful Death
Police Officer Terry Mulvey Badge #3486	:	Survivor Action
Police Officer Thomas Bellon Badge #4954	:	Jury Trial Demanded

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA – DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 4713 D. Street, Philadelphia, PA 19120

Address of Defendant: City of Philadelphia Law Department, 1515 Arch Street, 14th Floor, Philadelphia, PA 19102

Place of Accident, Incident or Transaction: 4700 "D" Street, Philadelphia, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)). Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?
RELATED CASE IF ANY:

Yes ☐ No ☒

Case Number: _____ Judge _____

Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. Indemnity Contract, Marine Contract, and All
2. FELEA
3. Jones Act – Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. ☒ Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All Other Federal Questions Cases (Please specify)

B. Diversity Jurisdiction Cases:

- | | |
|---|---|
| Other Contracts | 1. Insurance Contract and Other Contracts |
| 2. Airplane Personal Injury | |
| 3. Assault, Defamation | |
| 4. Marine Personal Injury | |
| 5. Motor Vehicle personal Injury | |
| 6. Other Personal Injury (Please specify) | |
| 7. Products Liability | |
| 8. Products liability - Asbestos | |
| | 9. All other Diversity Cases |
| | (Please specify) |

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Armando Brigandi, counsel of record do hereby certify:

☒ Pursuant to Local Rule 53.3 A, civil rights cases are excluded from arbitration.

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 4-29-14

Armando Brigandi, Esquire
Attorney-at-Law

92208

Attorney I.D. #

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above

DATE: 4-29-14

Armando Brigandi, Esquire
Attorney-at-Law

92208

Attorney I.D. #

CIV. 609 (4/03)


MAY - 6 2014

seeks relief under 42 U.S.C. § 1983. (Exhibit A)

Wherefore, petitioners, Police Officer James Boone, Police Officer Terry Mulvey, Police Officer Thomas Bellon, Philadelphia Police Department and City of Philadelphia, respectfully request that the captioned Complaint be removed to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

Craig M. Straw
Chief Deputy City Solicitor


ARMANDO BRIGANDI
Divisional Deputy City Solicitor
Attorney I.D. No. 92208
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
215-683-5381

Date: 4-29-14

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA


Kari Stankiewicz Berry, Administratrix for	:	Civil Action
	:	
The Estate of Michael Berry, Deceased, and	:	NO: _____
On behalf of minors Alyvia Berry & Tyler Berry	:	
4713 D. Street	:	
	:	
Plaintiff	:	Formerly
	:	Court of Common Pleas
v.	:	Civil Trial Division
	:	Civil No.
City of Philadelphia;	:	PCCP April Term, 2014; No. 1053
Philadelphia Police Department	:	
Police Officer James Boone Badge #1525	:	Wrongful Death
Police Officer Terry Mulvey Badge #3486	:	Survivor Action
Police Officer Thomas Bellon Badge #4954	:	Jury Trial Demanded

NOTICE OF FILING OF REMOVAL

TO: Anthony S. Pinnie, Esquire
334 West Front Street
Media, PA 19063

PLEASE TAKE NOTICE THAT on April 29, 2014, defendants, Police Officer James Boone, Police Officer Terry Mulvey, Police Officer Thomas Bellon, Philadelphia Police Department and City of Philadelphia filed, in the office of the Clerk of the United States District Court for the Eastern District of Pennsylvania a verified Notice of Removal.

A copy of this Notice of Removal is attached hereto and is also being filed with the Clerk of the Court of Common Pleas of Philadelphia County, pursuant to Title 28, United States Code, Section 1446(e).


ARMANDO BRIGANDI
Divisional Deputy City Solicitor
Attorney I.D. No. 92208
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
215-683-5381

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

Kari Stankiewicz Berry, Administratrix for
The Estate of Michael Berry, Deceased, and
On behalf of minors Alyvia Berry & Tyler Berry
4713 D. Street

Plaintiff

v.

City of Philadelphia;
Philadelphia Police Department
Police Officer James Boone Badge #1525
Police Officer Terry Mulvey Badge #3486
Police Officer Thomas Bellon Badge #4954

Civil Action

NO: _____

Formerly

Court of Common Pleas

Civil Trial Division

Civil No.

PCCP April Term, 2014; No. 1053

Wrongful Death

Survivor Action

Jury Trial Demanded

CERTIFICATE OF SERVICE

I, Armando Brigandi, Divisional Deputy City Solicitor, do hereby certify that a true and correct copy of the attached Notice of Removal has been served upon the following by First Class Mail, postpaid, on the date indicated below:

TO: Anthony S. Pinnie, Esquire
334 West Front Street
Media, PA 19063



ARMANDO BRIGANDI
Divisional Deputy City Solicitor

Attorney ID No. 92208

City of Philadelphia Law Department

1515 Arch Street, 14th Floor

Philadelphia, PA 19102

215-683-5381

Date: 4-24-14

Exhibit “A”

APRIL 2014

001053

E-Filing Number: 1404022008

Civil Cover Sheet

PLAINTIFF'S NAME KARI STANKIEWICZ BERRY		DEFENDANT'S NAME CITY OF PHILADELPHIA	
PLAINTIFF'S ADDRESS 4713 D STREET PHILADELPHIA PA 19120		DEFENDANT'S ADDRESS 1515 ARCH STREET PHILADELPHIA PA 19102	
PLAINTIFF'S NAME		DEFENDANT'S NAME JAMES BOONE	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 1515 ARCH STREET PHILADELPHIA PA 19102	
PLAINTIFF'S NAME		DEFENDANT'S NAME TERRY MULVEY	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 1515 ARCH STREET PHILADELPHIA PA 19102	
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 4	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE 20 - PERSONAL INJURY - OTHER			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>KARI STANKIEWICZ BERRY</u> Papers may be served at the address set forth below.		FILED PRO PROTHY APR 11 2014 K. EDWARDS	
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY ANTHONY S. PINNIE		ADDRESS PINNIE LAW OFFICES 334 W. FRONT ST MEDIA PA 19063	
PHONE NUMBER (610) 892-9200	FAX NUMBER (610) 565-5393		
SUPREME COURT IDENTIFICATION NO. 46696		E-MAIL ADDRESS apinnie@schusterlaw.com	
SIGNATURE OF FILING ATTORNEY OR PARTY ANTHONY PINNIE		DATE SUBMITTED Friday, April 11, 2014, 11:50 am	

FINAL COPY (Approved by the Prothonotary Clerk)

COMPLETE LIST OF DEFENDANTS:

1. THOMAS BELLON
1515 ARCH STREET
PHILADELPHIA PA 19102
2. TERRY MULVEY
1515 ARCH STREET
PHILADELPHIA PA 19102
3. JAMES BOONE
1515 ARCH STREET
PHILADELPHIA PA 19102
4. CITY OF PHILADELPHIA
1515 ARCH STREET
PHILADELPHIA PA 19102

ANTHONY S. PINNIE, ESQUIRE
I.D. NO. 46696
NANCY L. WRIGHT, ESQUIRE
I.D. NO. 316341
334 West Front Street
Media, PA 19063
(610) 892-9200
apinnie@pinnielaw.com

ATTORNEYS FOR PLAINTIFF



Kari Stankiewicz Berry, Administratrix for
The Estate of Michael Berry, Deceased, and
On behalf of minors Alyvia Berry & Tyler Berry
4713 D. Street
Philadelphia, Pennsylvania 19120

Plaintiff

v.

City of Philadelphia;
Philadelphia Police Department;
Police Officer James Boone Badge#1525
Police Officer Terry Mulvey Badge#3486;
Police Officer Thomas Bellon Badge#4954

: COURT OF COMMON PLEAS
: CIVIL TRIAL DIVISION
: CIVIL NO.

: WRONGFUL DEATH
: SURVIVOR ACTION
: JURY TRIAL DEMANDED

COMPLAINT IN CIVIL ACTION

Notice

You have been sued in court. If you wish to defend against the claims forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering an appearance personally or by attorney and filing in writing with the court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed with out you and a judgment may be entered against you by the court without further notice for any money claimed complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, DO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP

ASSOCIATION
LAWYER REFERRAL AND INFORMATION
SERVICE
ONE READING CENTER
PHILADELPHIA, PENNSYLVANIA 19107
(215) 238-1701

Aviso

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas ex puestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion, Hace falta asentar una comparencia escrito en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE P AGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL. PHILADELPHIA BAR ASOCIACION DE LICENCIADOS DE FILADELPHIA SERVICIO DE REFERENCIA E INFORMACION LEGAL ONE READING CENTER FILADELPHIA, PENNSYLVANIA 19107 (215) 238-1701

ANTHONY S. PINNIE, ESQUIRE
I.D. NO. 46696
NANCY L. WRIGHT, ESQUIRE
I.D. NO. 316341
334 West Front Street
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ATTORNEYS FOR PLAINTIFF

Kari Stankiewicz Berry, Administratrix for
The Estate of Michael Berry, Deceased
On behalf of minors Alyvia Berry & Tyler Berry
4713 D. Street
Philadelphia, Pennsylvania 19120

Plaintiff

v.

City of Philadelphia;
Philadelphia Police Department;
Police Officer James Boone Badge#1525
Police Officer Terry Mulvey Badge#3486;
Police Officer Thomas Bellon Badge#4954

: COURT OF COMMON PLEAS
: CIVIL TRIAL DIVISION
: CIVIL NO.

: WRONGFUL DEATH
: SURVIVOR ACTION
: JURY TRIAL DEMANDED

COMPLAINT

Jurisdiction and Venue

1. This action is brought for damages and other appropriate relief under 42 U.S.C.A. § 1983 for violation of Michael Berry's (hereinafter "Berry") federal civil rights by the Defendants, whose actions were taken under color of state law, as well as an action for damages pursuant to appropriate laws of the Commonwealth of Pennsylvania.
2. This Court has jurisdiction of the subject matter of this action and venue of this action is proper.
3. This Court has jurisdiction over any and all Berry's state law claims based upon supplemental jurisdiction.

Parties

4. Plaintiff, Kari Stankiewicz Berry, is the Administratrix for The Estate of Michael Berry, deceased. She resides at 412 Woodcliffe Road, Upper Darby, Pennsylvania.

5. Berry, deceased, was an adult individual who, for all times relevant to this lawsuit, resided at 4713 D. Street in Philadelphia, County of Philadelphia, Pennsylvania.

6. For all times relevant to this lawsuit, Defendant, the City of Philadelphia (hereinafter "the City") is a Municipal Entity, and was a city of the first class located in Pennsylvania, within the Commonwealth of Pennsylvania, and was the employer of the above named Police personnel, with an official place of business at 1500 Arch Street in Philadelphia, in the County of Philadelphia, 19106, Pennsylvania.

7. For all times relevant to this lawsuit, Defendant Police Department, was an agency of the City of Philadelphia, with the responsibility of operating all aspects related to Police law enforcement.

8. During all times the individual defendant Police Officers James Boone, Terry Mulvey and Thomas Bellon (hereinafter "defendant officers") mentioned in this Complaint, upon information and belief, were and still are, police officers employed by the City of Philadelphia in the 25th District's homicide unit.

9. Defendant police officers were acting in their official capacity and under color of State law and under the direction of The City, as either agents, and/or employees, within the scope and course of their employment.

10. During all times mentioned in this Complaint, Defendants were acting under color of law, to wit, under color of the Constitution, statutes, ordinances, laws,

rules, regulations, policies, customs and usages of the Commonwealth of Pennsylvania and/or the City of Philadelphia.

11. During all times mentioned in this Complaint, Defendants and each of them, separately and in concert, engaged in acts and omissions which constituted deprivation of the Constitutional rights, privileges and immunities of Berry, and while these acts were carried out under color of law, they had no justification or excuse in law, and were instead gratuitous, illegal, improper and unrelated to any activity in which law enforcement and/or officers may appropriately and legally engage in the course of protecting persons and property and/or ensuring civil order, and/or in the course of carrying out their official duties.

12. Each of the Defendants at all times relevant to this action had the power and the duty to restrain the other Defendants and prevent them from violating the law and the rights of the Berry; but each of the Defendants failed and refused to perform that duty, failed and refused to restrain the other Defendants, and thereby became a party to the injuries inflicted upon Berry which led to his death, and acted in concert with the other to harm Berry.

STATEMENT OF FACTS

13. On or about August 27, 2012, at or around midnight, Berry was at the El Paradisio Bar located at 4700 "D" Street (D and Wyoming Avenue) in the County of Philadelphia. Berry was 39 years old at the time of his death.

14. At some time prior to the incident that gives rise to this action, it is averred that Berry was hit over the head with a beer bottle by another patron in bar, Marco Tulio

Lopez, a/k/a Tulio, while inside the bar. The argument carried into the street with a crowd of people witnessing the events.

15. Defendant officers Boone, Mulvey, and Bellon, responding to a 911 call, came to the scene in a black Ford Crown Victoria. Defendant officers were undercover, and were in an undercover unmarked car. Defendant officers work in "Special Operations". At no time did the defendant Officers sound any police lights, police siren, or any other audible or visual warning, in order to alert Berry and/or other bystanders.

16. Thereafter, and without warning, defendant officer Boone exited his vehicle and immediately drew his firearm, while Berry was attempting to retreat into the bar. Berry was shot 8 times when Defendant Officer Boone unloaded his firearm into the Plaintiff, with multiple bullets entering Plaintiff's back and side. The entire compilation of events has been captured on video tape.

17. Defendant Officer Boone, as well as the other defendant Officers, were not, at any time, under any immediate threat of harm by the Plaintiff, and all acted willfully and without just cause. Officer Boone has a consistent pattern of resorting to the use of excessive force, and it is averred that Boone has discharged his weapon in the past without proper cause.

18. Medic #8B arrived on the scene and pronounced Berry dead at 12:25am.

19. The City of Philadelphia Police Department had been under voluntary scrutiny by the United States Department of Justice for their improper use of excessive and deadly force based an escalating number of events on citizens.

FIRST CAUSE OF ACTION: 42 U.S.C. § 1983 -EXCESSIVE USE OF FORCE

20. Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, repeats, reiterates and re-alleges each and every allegation contained in ¶¶ 1 through 19 of this Complaint with the same force and effect as though fully set forth herein.

21. The Defendant officers' treatment of Berry was unreasonable and was a direct result of the Philadelphia Police Department's custom, policy, and practice.

22. As a direct result of Philadelphia Police Department's custom, policy, and practice, committed under color of state law under authority as Philadelphia police officers, Berry was shot eight times and died at the scene.

23. The City of Philadelphia had a pattern, practice and procedure to allow the Philadelphia Police Detectives to use unabated deadly force against citizens, such as Plaintiff Berry, and engaged in practices and procedures that were in violation of a citizens, such as Berry, constitutional rights and failed to investigate and prosecute officers who violated the constitutional rights of others.

24. The pattern and practice of the City of Philadelphia and defendant detectives including defendants, Boone, Mulvey and Bellon, has been ongoing and had led to police officers and detectives having the authority to exceed their constitutional rights as authorized by the Pennsylvania State Constitution, the Constitution of the United States and the laws of the Commonwealth of Pennsylvania. Nevertheless, and

with knowledge that this pattern has continued, defendant, City of Philadelphia, has failed to properly train police officers in their duties and responsibilities to avoid this occurring and has failed to discipline police officers when this, in fact, does occur.

25. For example, the City of Philadelphia Police Department, per Police Chief Charles H. Ramsey, voluntarily requested the United States Department of Justice to review the practices and procedures of the City of Philadelphia Police department as it relates to the use of deadly force.

26. It is believed that Police in Philadelphia shot 52 suspects in 2013. Of those, 15 people died. In 2011, police wounded or killed 35 people. As a result, Police Chief Ramsey commented to the press "When you have as many as we've had, it gets people wondering if they were all justified,"

27. The defendant officers' conduct constituted unreasonable, excessive and deadly force, in violation of Berry's rights under the United States Constitution and 42 U.S.C. §1983. Such actions were improper, as Defendant Officers had a duty not to subject Berry to any excessive use of force, and not to deprive Berry of his right to be secure in his person against unreasonable seizure of his person and the use of excessive force, in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. §1983.

28. As a direct and proximate result of the Philadelphia Police Department's custom, policy, and practice of Defendant Officers' wrongful actions, which were intentional, willful, reckless, and shocking to the conscience, Berry died and before his death was subjected to great pain, suffering, fear, terror, personal humiliation and degradation.

29. Each of the Defendant Officers involved in such excessive use of force knew or had reason to know, upon information and belief, that such use of force was excessive, and had a realistic opportunity, upon information and belief, to intervene to prevent such excessive use of force from occurring.

WHEREFORE, Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, demands judgment against all Defendants, jointly and/or severally, for an amount in excess of \$50,000.00 for compensatory damages, and further demands Judgment against all Defendants, jointly and/or severally, for Punitive Damages in an amount in excess of \$50,000.00, plus allowable attorney's fees pursuant the applicable Statute, costs of this action, and any other such relief, equitable or otherwise, as the Court deems appropriate.

SECOND CAUSE OF ACTION, 42 U.C.S. §1983;
STATE CREATED DANGER

30. Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, repeats, reiterates and re-alleges each and every allegation contained in ¶¶ 1 through 29 of this Complaint with the same force and effect as though fully set forth herein.

31. At all times relevant hereto, the Individual Police officers as well as the other named Defendant, were acting under color of law, to wit, under color of the Constitution, statutes, ordinances, laws, rules, regulations, policies, customs and usages of the Commonwealth of Pennsylvania and/or the City of Philadelphia, as well as acting within the scope and course of their employment.

32. When the Defendant Police Officers came to the scene on the evening of August 27, 2012, at midnight, they exercised their authority, as Philadelphia Police Officers, to confront Berry *who was retreating*, and thus created the danger, that ultimately lead to Berry's death. As a direct and proximate result of the improper actions of the Defendant Police Officers, Berry was shot multiple times by Defendant Boone and killed. Plaintiff's death was foreseeable and a direct result of the actions of the Defendant officers.

33. At all times relevant, the actions of the Defendant Officers was with complete willful disregards for the rights and safety of Berry, and the Defendants acted in a manner that would shock the conscience of a reasonable man.

WHEREFORE, Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, demands judgment against all Defendants, jointly and/or severally, for an amount in excess of \$50,000.00 for compensatory damages, and further demands Judgment against all Defendants, jointly and/or severally, for Punitive Damages in an amount in excess of \$50,000.00, plus allowable attorney's fees pursuant the applicable Statute, costs of this action, and any other such relief, equitable or otherwise, as the Court deems appropriate.

THIRD CAUSE OF ACTION, 42 U.C.S. §1983;
MUNICIPAL VIOLATIONS

34. Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, repeats, reiterates and re-alleges each and every allegation contained in ¶¶ 1 through 33 of this Complaint with the same force and effect as though fully set forth herein.

35. Prior to August 27, 2012, and since that time, defendant City of Philadelphia has permitted and tolerated a pattern and practice of illegal behavior by its Police Officers in the City of Philadelphia in situations which Defendant City knew to a moral certainty that such officers, including Defendant Officers in the situation complained of herein, would confront. Although such behavior has been improper, the Defendant Officers involved were not seriously prosecuted, disciplined or subjected to restraint or training or supervision.

36. Defendant City of Philadelphia has permitted and tolerated behavior which is ongoing and had led to Police Officers and Detectives having the authority to exceed their constitutional rights as authorized by the Pennsylvania State Constitution, the Constitution of the United States and the laws of the Commonwealth of Pennsylvania. Nevertheless, and with knowledge that this pattern has continued, defendant, City of Philadelphia, has failed to properly train police officers in their duties and responsibilities to avoid this occurring and has failed to discipline police officers when this, in fact, does occur.

37. In addition to permitting a pattern and practice of illegal behavior, such behavior frequently has resulted in violations of Constitutional and Federal and State statutory rights, and such violations of such rights have been known to Defendant City. Defendant City has failed to maintain a proper system for investigation of all incidents of illegal action by officers.

38. Proper training and supervision with regard to situations such as the one complained of herein, and the possible choices and actions that officers may take which

would be legal, would make such proper choices easier to make for officers in situations such as the one complained of herein.

39. Defendant City has failed, however, to conduct such proper training and supervision, but, rather, have allowed a system and a policy and practice that results in illegal conduct by officers such as the illegal conduct complained of herein.

40. The foregoing acts, omissions, systemic flaws, policies and customs of defendant City has caused officers of defendant City to believe that false arrests and imprisonments, brutality and other improper actions would not be properly investigated and corrected, with the foreseeable result that officers are most likely to act improperly and to use excessive force in situations where such actions and force are neither necessary nor reasonable.

41. As a direct and proximate result of the aforesaid acts, omissions, systemic flaws, policies, and customs of Defendant City, the Defendant Officers unjustifiably used excessive force against, and otherwise violated the civil rights of Berry as complained of herein, causing his death.

WHEREFORE, Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, demands judgment against all Defendants, jointly and/or severally, for an amount in excess of \$50,000.00 for compensatory damages, and further demands Judgment against all Defendants, jointly and/or severally, for Punitive Damages in an amount in excess of \$50,000.00, plus allowable attorney's fees pursuant the applicable Statute, costs of this action, and any other such relief, equitable or otherwise, as the Court deems appropriate.

FOURTH CAUSE OF ACTION
VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS OF THE
UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

42. Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, repeats, reiterates and re-alleges each and every allegation contained in ¶¶ 1 through 41 of this Complaint with the same force and effect as though fully set forth herein.

43. The Defendants' treatment of Berry was without provocation and unreasonable, and was a direct result of the Police Department's custom, policy, and practice.

44. Defendants applied excessive force against Berry despite his lack of resistance and/or threatening actions toward Defendants.

45. As a direct and proximate result of the aforesaid acts, omissions, systemic flaws, policies, and customs of defendant City, the Defendant Officers unjustifiably used excessive force against, and otherwise violated the civil rights of Berry as complained of herein, causing his death, in violation of his Fourth and Fourteenth Amendment rights under the United States Constitution.

WHEREFORE, Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, demands judgment against all Defendants, jointly and/or severally, for an amount in excess of \$50,000.00 for compensatory damages, and further demands Judgment against all Defendants, jointly and/or severally, for Punitive Damages in an amount in excess of \$50,000.00, plus allowable attorney's fees pursuant the

applicable Statute, costs of this action, and any other such relief, equitable or otherwise, as the Court deems appropriate.

FIFTH CAUSE OF ACTION
WRONGFUL DEATH

46. Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, repeats, reiterates and re-alleges each and every allegation contained in ¶¶ 1 through 45 of this Complaint with the same force and effect as though fully set forth herein.

47. Plaintiff's Decedent, Michael Berry, left surviving:

- a. Daughter--Alyvia Berry (DOB: 3/10/08)
- b. Son--Tyler Berry (DOB: 3/16/09)

48. Michael Berry died on August 27, 2012.

49. On July 12, 2012, the Philadelphia County register of wills appointed Kari Stankiewicz Berry as Co-Administrator of the Estate of Michael Berry, deceased.

50. Plaintiff, Kari Stankiewicz Berry, Administratrix of the Estate of Michael Berry, deceased, brings this action On behalf of decedent's Estate under and by virtue of the Pennsylvania Judiciary Act 42 Pa. C.S. §8301, known as the Wrongful Death Statute.

51. All persons entitled to share in the Estate are Kari Stankiewicz Berry (Wife), Alyvia Berry (Daughter) and Tyler Berry (son).

52. The Plaintiffs' Decedent, Michael Berry, was an adult at the time of his

death. As a result of his death, Plaintiffs, Kari Stankiewicz Berry (Wife), Alyvia Berry (Daughter) and Tyler Berry (son) sustained pecuniary injury and other wrongful death act losses by reason of his death.

53. Plaintiffs' Decedent, Michael Berry, did not bring any personal injury action during his lifetime against the Defendants named herein.

54. Plaintiffs claim on behalf of Decedent's survivors all damages recoverable under The Wrongful Death Act, including but not limited to the pecuniary value of support, services, society and comfort that decedent would have provided to them if he had lived, as well as for the reimbursement of medical expenses, funeral expenses and other expenses incurred in connection with his death.

WHEREFORE, Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, demands judgment against all Defendants, jointly and/or severally, for an amount in excess of \$50,000.00 for compensatory damages, and further demands Judgment against all Defendants, jointly and/or severally, for Punitive Damages in an amount in excess of \$50,000.00, plus allowable attorney's fees pursuant the applicable Statute, costs of this action, and any other such relief, equitable or otherwise, as the Court deems appropriate.

SIXTH CAUSE OF ACTION
SURVIVAL ACTION

55. Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, repeats, reiterates and re-alleges each and every allegation contained in ¶¶ 1 through 54 of this Complaint with the same force and effect as though fully set forth herein.

56. Plaintiff brings this action on behalf of decedent's Estate under and by virtue of the Pennsylvania Judiciary Act 42 Pa. C.S. §8302, known as the Survival Statute.

57. Plaintiff's decedent is survived by the persons listed in Paragraph 51, 52.

58. Plaintiff's claim on behalf of the Estate for all damages recoverable under the Survival Act, including but not limited to damages for the conscious pain and suffering undergone by decedent as a result of the conduct of Defendants, their real, apparent, and/or ostensible agents, servants, and/or employees, up to and including the time of his death; the net amount of money decedent would have earned between the date of his death and today and the net amount of money Decedent would have earned between today and the end of his life expectancy.

WHEREFORE, Plaintiff, Kari Stankiewicz Berry, Administratrix for The Estate of Michael Berry, Deceased, demands judgment against all Defendants, jointly and/or severally, for an amount in excess of \$50,000.00 for compensatory damages, and further demands Judgment against all Defendants, jointly and/or severally, for Punitive Damages in an amount in excess of \$50,000.00, plus allowable attorney's fees pursuant the applicable Statute, costs of this action, and any other such relief, equitable or otherwise, as the Court deems appropriate.

SEVENTH CAUSE OF ACTION
VIOLATIONS OF CIVIL RIGHTS UNDER THE CONSTITUTION
OF THE COMMONWEALTH OF PENNSYLVANIA

59. Paragraphs 1-58 of the Complaint are incorporated herein by reference.

60. The Defendants City of Philadelphia, Detectives Boone, Mulvey and Bellon acting jointly and in concert and conspiracy to violate the civil rights of Berry, in violation of Article 1, §§ 1, 7, 8, 9, 13 and 26 of the Constitution of the Commonwealth of Pennsylvania and the laws of the Commonwealth of Pennsylvania.

61. As a result of these actions, Plaintiff Berry, suffered conscious pain and suffering up to the time of his death and the loss of liberty, property and the pursuit of happiness.

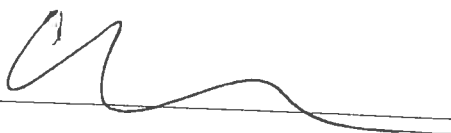
62. The actions of Defendants were willful, malicious, oppressive, outrageous and unjustifiable and, therefore, punitive damages are necessary and appropriate.

WHEREFORE, Plaintiff demands judgment against the defendants, jointly and severally, for compensatory and punitive damages in an amount in excess of fifty thousand dollars (\$50,000.00) plus such reasonable costs as the court may allow.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all claims.

RESPECTFULLY SUBMITTED:



ANTHONY S. PINNIE
NANCY L. WRIGHT
Attorneys for Plaintiff
334 West Front Street
Media, PA 19063
610 892 9200

April 4, 2014

VERIFICATION

I, **ANTHONY S. PINNIE, ESQUIRE**, being duly sworn according to law, depose and say, that I am the attorney for Plaintiff in the aforementioned matter, and that the facts contained in the foregoing Pleading are true and correct, to the best of my knowledge, information, and belief.

This affirmation is made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

BY:

Date: April 4, 2014

/s/Anthony S. Pinnie
ANTHONY S. PINNIE, ESQUIRE

VERIFICATION

The averments or denials of fact contained in the foregoing document are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This Verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATE: 4-11-14

Kari Berry